

May 23, 2002

ALTERNATIVE DISPUTE RESOLUTION – MEDIATION PROGRAM

1. PURPOSE: This Veterans Health Administration (VHA) Directive sets forth VHA policy regarding the use of alternative dispute resolution (ADR) methods to resolve workplace disputes; and it delineates areas of responsibility for the administration of VHA's ADR-Mediation program.

2. BACKGROUND

a. VHA is committed to providing its employees with a work environment that enables them to deliver quality patient care and services to the Nation's veterans. To do this, employees must have access to effective and efficient mechanisms for resolving workplace disputes. In addition to the traditional administrative adjudication processes, every VHA employee needs to have the opportunity to utilize an ADR process to resolve a workplace difference or dispute.

b. VHA supports the use of ADR, to the maximum extent practicable, as a method for resolving workplace disputes. Mediation is the only ADR process that may be used to resolve Equal Employment Opportunity (EEO) disputes. The resolution of EEO disputes must be in accordance with Title 29 Code of Federal regulations (CFR) §1614 and Equal Employment Opportunity Commission (EEOC) Management Directive 110. Local facilities may find it beneficial to offer employees more than one type of ADR process for resolving workplace disputes such as: conciliation, facilitation, interest-based problem solving, peer review, neutral fact-finding, and early neutral evaluation.

c. Definitions

a. **Alternative Dispute Resolution (ADR).** ADR is a group of processes that specially trained neutral persons, who are not associated with the controversy, use to help individuals resolve a dispute. Forms of ADR include, but are not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials and arbitration, or any combination thereof.

b. **Mediation.** Mediation is an ADR process in which a skilled, impartial third party, called a mediator, assists the parties in reaching a mutually agreeable resolution to a dispute by facilitating better communication, identifying interests, and helping explore possible solutions.

3. POLICY: It is VHA policy that VHA make ADR and mediation services available to employees at all levels.

4. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for:

(1) Ensuring that all employees within the administration have access to ADR and mediation as a method of resolving workplace disputes.

THIS VHA DIRECTIVE EXPIRES MAY 30, 2007

VHA DIRECTIVE 2002-028

May 23, 2002

(2) Urging VHA managers and supervisors to support, participate in, and encourage early dispute resolution through ADR.

(3) Designating and delegating the following responsibilities (see VA Dir. 5978):

(a) VHA ADR Steering Committee. The VHA ADR Steering Committee must be designated by the Under Secretary for Health to oversee and evaluate VHA ADR initiatives and efforts. Specifically, the Committee must provide advice and guidance to the Under Secretary for Health regarding implementation of VHA's responsibilities as outlined in VA Directive 5978. Membership on the Committee will be drawn from across VHA lines and will include representatives from VA Central Office, field facilities, management and labor. The Committee is to:

1. Develop plans of action to ensure all VHA employees have access to an ADR-mediation program for resolving workplace disputes;

2. Advise VHA, via the VHA ADR Coordinator, on program improvements and ways to further develop a high-quality, active VHA program;

3. Review existing approaches to conflict resolution within VHA; identify unnecessary barriers; and recommend courses of action to increase the use of conflict avoidance and early conflict resolution through ADR-mediation;

4. Ensure that mechanisms are established to provide employees with the necessary information for them to make informed decisions regarding the options of ADR-mediation; and

5. Work closely with Department organizational elements utilizing a One-VA approach to ensure the availability of ADR resources in a cost-effective and time-efficient manner. The Committee shall interact with the Department's ADR Working Group through the VHA ADR Coordinator. The Committee will provide guidance to VHA regarding data collection, training needs, resource allocation, and overall user satisfaction.

(b) VHA ADR Coordinator. The VHA ADR Coordinator is responsible for implementing Department policies and directives regarding ADR and overseeing the development of ADR programs throughout VHA. Specifically, the VHA ADR Coordinator is to:

1. Represent the Under Secretary for Health on all matters relating to ADR-mediation at both the VHA and the Department level;

2. Coordinate efforts and maintain effective working relationships with other Administration ADR Coordinators and staff office ADR-mediation programs;

3. Collaborate with exclusive labor representatives on VHA ADR-mediation efforts and initiatives;

4. Serve on the VA-ADR Working Group established pursuant to VA Directive 5978, Alternative Dispute Resolution, and on the VHA ADR Steering Committee; liaison between the VHA Steering Committee and the Administration; work collaboratively with intra- and inter-agency ADR groups to coordinate and optimize the use of Federal ADR resources; and

5. Maintain an inventory of current ADR-mediation programs within VHA; work with the VHA Steering Committee and Veterans Integrated Service Network (VISN) Directors to establish and maintain databases, information systems, and instruments that are consistent with Departmental ADR policy; in collaboration with the VHA Steering Committee, develop mechanisms for tracking, reporting, and monitoring the current quantity and quality of ADR-mediation activity within VHA.

b. **VISN Directors.** VISN Directors are responsible for supporting, approving and establishing ADR-mediation programs for all facilities within the network and ensuring that the ADR-mediation option is available to all employees for resolution of workplace disputes. VISN Directors may establish an integrated VISN-wide program, or they may support the establishment of individual programs decentralized to each local VHA facility. ***NOTE: The ADR-mediation program needs to reflect individual cultures and meet VISN and local facilities needs, ensuring, to the maximum extent practicable, that VA's exclusive labor representatives mutually participate in the joint development and design of local programs that are consistent with collective bargaining agreements.*** Specifically, VISN Directors are to

(1) Encourage all managers, supervisors, and employees to use ADR-mediation to resolve workplace conflict at the earliest stage possible; and provide all employees access to ADR-mediation services;

(2) Take action to ensure facility Directors and other senior management officials are evaluated in terms of their efforts to implement and utilize ADR-mediation to resolve workplace disputes;

(3) Establish mechanisms for collecting and analyzing information; work collaboratively with exclusive labor representatives to analyze and evaluate data; and

(4) Designate a VISN ADR Coordinator to administer and oversee the ADR-mediation program efforts within the VISN. This designation may be made on a full-time, part-time or collateral duty basis and may utilize the services of a VHA employee employed at the facility level.

c. **VISN ADR Coordinator.** The VISN ADR Coordinator is responsible for coordinating and overseeing ADR-mediation program efforts within the VISN. Specifically, the VISN ADR Coordinator:

(1) Coordinates the provision of resources, training, and VISN level support to field facilities;

VHA DIRECTIVE 2002-028

May 23, 2002

(2) Liaisons with VISN facilities, Regional Counsel, and exclusive labor representatives on all matters related to ADR-mediation and maintains effective and collaborative working relationships with such;

(3) Develops and recommends plans of action to the VISN Director to improve the effectiveness of ADR-mediation programs within the VISN; and

(4) Liaisons between the VISN Director and VHA on matters relating to ADR-mediation to include tracking, monitoring, and evaluating VISN-wide ADR-mediation activity.

d. **Medical Center and/or Health Care System Directors.** *NOTE: The ADR-mediation program needs to reflect individual cultures and meet the VISN and local facilities need, ensuring, to the maximum extent practicable, that VA's exclusive labor representatives mutually participate in the joint development and design of local programs that are consistent with collective bargaining agreements.* Medical Center and/or Health Care System Directors are responsible for:

(1) Designing and implementing ADR-mediation programs in collaboration with their exclusive labor representatives in order to provide all employees access to ADR-mediation services to resolve workplace disputes.

(2) Providing education and awareness to employees regarding ADR-mediation.

(3) Encouraging all managers, supervisors and employees to use ADR-mediation to resolve workplace conflict at the earliest stage possible.

(4) Allocating adequate resources to the development, maintenance and on-going evaluation of local ADR-mediation programs.

(5) Taking action to ensure that supervisors and managers are evaluated in terms of their efforts to use both informal and formal techniques to resolve workplace disputes at the earliest stages possible.

(6) Appointing, in collaboration with their exclusive labor representatives, a local ADR Coordinator for the facility. This appointment may be made on a full-time, part-time, or collateral duty basis. *NOTE: Directors may use flexibility in utilizing alternative means such as designation of co-coordinators or establishment of ADR workgroups, taskforces, or committees.* However, for ease of communication, a single ADR point-of-contact must be appointed to liaison with other VA-ADR entities outside the facility.

(7) Ensuring that the ADR-mediation program is coordinated in a fair and neutral manner and is provided the necessary resources.

(8) Approving, as appropriate, the settlement agreements arrived at through ADR-mediation.

e. **Labor Representatives.** VHA recognizes that at certain local facilities the exclusive representative of employees covered by a collective bargaining agreement may elect not to

participate or allow their members to participate in the local ADR program. At such facilities ADR processes may be unavailable to employees covered by the collective bargaining agreement. **NOTE:** *For bargaining unit employees, any settlement reached using ADR must comply with the appropriate collective bargaining agreement.*

(1) Labor representatives are encouraged to support the appropriate use of mediation and various other ADR processes as effective alternatives to resolving workplace disputes.

(2) Union officials have the right to participate in all stages of the ADR-mediation program development, including design and implementation. They are urged to work collaboratively with facility Directors to help create ADR and mediation programs that encourage the active participation of all employees at the facility. They have the right to decide whether the local level bargaining unit employees they represent may participate in a local ADR process, individually or as a group. The local union is the authorized representative of all bargaining unit employees at the facility.

(3) Local union representatives have the right to be present at all ADR processes involving a bargaining unit employee. If the dispute involves a union grievance, they have the right to participate as a party in the ADR process and as the representative of the bargaining unit employee. On other non-grievance disputes involving a bargaining unit employee, on an as requested basis, they may participate as an individual's personal representative.

f. **Local Facility ADR Coordinator(s).** Local Facility ADR Coordinator(s) may as appropriate, be assigned responsibilities such as:

(1) Promoting the use of ADR-mediation as an effective alternative to resolving workplace disputes; provide education and awareness to facility employees regarding the facility's ADR-mediation program, the types of disputes appropriate for ADR-mediation and the procedures for requesting ADR-mediation.

(2) Working in collaboration with the exclusive labor representatives, EEO program officials, regional counsels, and other interested parties to promote positive working relationships and ensure the administration of an effective program which meets the needs of the facility and its stakeholders and is compliant with applicable regulations and collective bargaining agreements;

(3) Working in collaboration with facility Equal Employment Opportunity (EEO)/Affirmative Employment Program (AEP) Specialists to implement facility ADR-mediation programs which comply with the objectives of the VA's Office of Resolution Management (ORM) ADR Plan;

(4) Serving as a resource for information regarding ADR and mediation; assist in developing trained and qualified mediators; and coordinate local training efforts (to include annual awareness training for all employees, managers, supervisors and exclusive labor representatives);

(5) Advising employees of general timeframes and statutory deadlines for pursuing traditional forms of dispute resolution (i.e., deadline for contacting an EEO counselor, filing a

VHA DIRECTIVE 2002-028

May 23, 2002

grievance, etc.). As appropriate, referring employees to the exclusive labor representative and responsible program officials for case-specific guidance on applicable timeframes and statutory deadlines;

(6) Capturing, maintaining, and reporting data as requested by program officials.

(7) Serving as liaison with, among other entities, other facility ADR Coordinators, the VISN ADR Coordinator, the VHA ADR Coordinator and the VHA ADR Steering Committee.

(8) Performing such additional duties and responsibilities as may be agreed upon in the design of the local facility ADR-mediation program. **NOTE:** *It is imperative that the Facility ADR Coordinator carry out the duties and responsibilities associated with this program in a manner that is perceived by both the exclusive labor representative and management to be fair and neutral. This individual must understand and respect the principles of ADR and mediation.*

g. **Mediators.** Mediators must adhere to the core ADR-mediation principles and follow professional guidelines for the practice of mediation. Mediators must complete a minimum of 24 hours of mediation skills training; have a general understanding of traditional dispute process and the applicable statutory timeframes; and disclose all possible conflicts of interest to the parties. All mediators must possess the ability to remain neutral, protect the confidentiality of the mediation process, and ensure the parties participate voluntarily and make informed choices.

h. **VHA Managers and Employees.** VHA managers and employees must be committed to resolving workplace disputes at the earliest stages possible. This may include ADR-mediation, or other informal conflict resolution techniques. Supervisors are to encourage open and honest communication with employees and demonstrate effective conflict resolution skills. All employees, supervisors, and managers must support ADR-mediation program(s) by encouraging the use of early conflict resolution and appropriately participating in the ADR-mediation process.

5. REFERENCES

- a. Administrative Dispute Resolution Act of 1996.
- b. Title 5 United States Code (U.S.C.) §§571-584.
- c. VA Directive 5978, Alternative Dispute Resolution (February 23, 2000).
- d. Equal Employment Opportunity Commission (EEOC) 29 CFR §1614 (requiring that each Federal agency make available an ADR program for employees who believe they have been the victims of a prohibited discrimination).
- e. EEOC Management Directive 110.
- f. Applicable national and local collective bargaining agreements.

May 23, 2002

6. FOLLOW-UP RESPONSIBILITIES: Associate Deputy Under Secretary for Health (10N) is responsible for the contents of this directive. Questions may be referred to 202-273-6743.

7. RESCISSIONS: None. This VHA Directive expires May 31, 2007.

Robert H. Roswell, M.D.
Under Secretary for Health

DISTRIBUTION: CO: E-mailed 5/24/2002
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 5/24/2002

Filename: 12002028
Directory: Q:\19E1\OLD_H
Template: C:\Documents and Settings\vhacolynchs\Application
Data\Microsoft\Templates\Normal.dot
Title: VHA DIR 2002-028, 05/23/02, Alternative dispute
resolution - mediation program
Subject: Employee Grievances, Negotiating
Author: Associate Deputy Under Secretary for Health (10N)
Keywords:
Comments:
Creation Date: 9/11/2002 6:34 AM
Change Number: 6
Last Saved On: 10/1/2002 2:02 PM
Last Saved By: Sherwin C. Lynch
Total Editing Time: 23 Minutes
Last Printed On: 10/1/2002 2:04 PM
As of Last Complete Printing
Number of Pages: 7
Number of Words: 2,414 (approx.)
Number of Characters: 13,764 (approx.)